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\* Associated Firm  
\*\* In cooperation with  
Trench, Rossi & Watanabe  
Advogados

May 5, 2016

**By ECF, and Chambers' Email**

Hon. Stuart M. Bernstein, U.S.B.J.  
United States Bankruptcy Court for the Southern District of  
New York  
One Bowling Green  
New York, New York 10004

**Re: *SIPA v. Bernard L. Madoff Investment Securities LLC*, Adv. Pro. No. 08-01789  
Trustee Profit Withdrawal Motion**

Dear Judge Bernstein:

On behalf of Norman Blum, a Participating Claimant, and consistent with Local Rule 7007-1(a) and Chamber Rules, we write to request a conference with the Court regarding a host of deposition notices the Trustee issued this week in violation of the Order Establishing Schedule for Limited Discovery and Briefing on Profit Withdrawal Issue ("**Order**") ECF 10266 (6/25/15). We have conferred with counsel and are unable to resolve the dispute. We request a conference so that we may request leave to move to quash the enclosed deposition notices.

The Order set out a very limited scope of discovery for this proceeding. *See Order at ¶¶ 3, 4, 6, 7* (allowing document requests and requests for admission). The Order expressly prohibits any other fact discovery without prior court permission: "*No fact discovery other than as specifically provided in Paragraphs 3 through 7 of this Order shall be permitted without leave of Court.*" *Id.* ¶ 8 (emphasis added).

The Order does not provide for any deposition whatsoever except for experts and previously disclosed testifying witnesses. *Id.* ¶ 12 (requiring coordination of "one deposition per expert or declarant" offered by the Trustee and allowing depositions of "witnesses offered by the Participating Claimants"). The Order contemplated that the Trustee would "file declarations ... including declarations from any expert or *other witnesses that will provide testimony on the Profit withdrawal Issue*" with his moving papers in July 2015. *Id.* at ¶ 1 (emphasis added). If the Trustee intended "to supplement any declarations or expert disclosures submitted in support of the Motion or *rely upon any additional witnesses*," he was required to disclose them on December 17, 2015. *Id.* at ¶ 10 (emphasis added).

We have received notices of deposition for four former Madoff Securities employees: JoAnn Sala, Winnifer Jackson, Dorothy Khan, and Alissa Mui. The Trustee did not file declarations from them last July, nor did he disclose them as witnesses in December. Indeed, prior to this week, the Trustee has not indicated to us any intention to present their testimony. These depositions are not permitted without prior leave of Court.

The Trustee has suggested that the Court's subsequent Order Amending Schedule of Litigation of Profit Withdrawal Issue, ECF 13038 (4/5/16), allows the Trustee to depose any person with potential knowledge of the Profit Withdrawal Issues until June 13, 2016. To the contrary, that

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Hon. Stuart M. Bernstein, U.S.B.J.  
May 5, 2016  
Page 2

Order simply extended the deadline for completion of discovery; it did not expand the scope of fact discovery.

The Trustee has also asserted that the Motion for Order Amending Schedule of Litigation of Profit Withdrawal Issue, ECF 12865, sought leave for the proposed depositions and put Participating Claimants on notice of the Trustee's intentions to take them. But the Motion doesn't mention Ms. Sala, Ms. Jackson, Ms. Khan, or Ms. Mui. Instead, it asserts that "The Trustee seeks relief from the Profit Withdrawal Scheduling Order in order to permit him the opportunity to seek to depose BLMIS employees with knowledge of the Profit Withdrawal Issue." Motion at 2. The appropriate method for the Trustee "to seek to depose" undisclosed potential fact witnesses is to request leave of Court, as set out in the Order.<sup>1</sup>

We object to this discovery as outside the scope of this proceeding. The Trustee's Profit Withdrawal Motion seeks judicial approval of his prior decision relating to the proper calculation of certain customer SIPA claims. The procedures contemplated an orderly process to obtain judicial review of the Trustee's determination, a determination necessarily premised on review of the information that existed and was considered at the time the decision was made. Thus, the Trustee was required to set forth the basis and supporting documentation for the determination, and objectors were required to set out their evidence in opposition. Testimony of former Madoff employees was not information on which the Trustee relied in making the decision now under review and cannot be probative of that decision. For this reason, what an employee might say about profit withdrawal notations is irrelevant to how the Trustee calculated the claim. The Court should not permit the Trustee this fishing expedition.

The Trustee has refused to withdraw the depositions notices or to confirm the number of depositions he intends to take prior to June 13, 2016. (See enclosed correspondence). The Trustee has provided no justification for them other than his own failure to support his original Motion. Under these circumstances, Participating Claimants respectfully request that the Court schedule a conference so that we may request leave to move to quash.

Respectfully,

Baker & McKenzie

By: /s/ Richard A. Kirby  
Richard A. Kirby

Encl.

cc: Seanna Brown, Baker & Hostetler LLP (by ECF and email)  
Kevin Bell, SIPC (by ECF and email)  
Helen Chaitman (by ECF and email)

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<sup>1</sup> The Motion makes one other passing reference to unnamed deponents, stating that the requested extension "would also be used to determine whether other BLMIS employees have knowledge relevant to the Profit Withdrawal Issue and, if so, to depose them." Motion at 3. This is not a request for leave to take innumerable depositions of undisclosed potential witnesses, nor does it suggest that the Trustee would do so without complying with the Order.

**Clinton, Laura K**

---

**From:** Brown, Seanna R. <sbrown@bakerlaw.com>  
**Sent:** Wednesday, May 04, 2016 3:23 PM  
**To:** Clinton, Laura K; Vanderwal, Amy E.  
**Cc:** Kirby, Richard A; hchaitman@chaitmanllp.com  
**Subject:** RE: SIPC v. BLMIS; Adv. Pro. No. 08-01789 (SMB)

Laura,

I confirm that the Trustee only currently intends to take the depositions of the six witnesses you listed below. However, the Trustee reserves his rights to take discovery until such time as discovery closes on June 13, including other depositions.

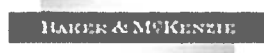
Regards,  
Seanna

---

**From:** Clinton, Laura K [<mailto:Laura.Clinton@bakermckenzie.com>]  
**Sent:** Wednesday, May 04, 2016 2:54 PM  
**To:** Brown, Seanna R.; Vanderwal, Amy E.  
**Cc:** Kirby, Richard A; [hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)  
**Subject:** RE: SIPC v. BLMIS; Adv. Pro. No. 08-01789 (SMB)  
**Importance:** High

Seanna, as a follow on to our meet and confer this afternoon, I note that the below notices include a new deponent (Ms. Khan). Please confirm whether you intend to take any other depositions beyond the four in dispute (Sala, Jackson, Mui, and Khan), and the two that are the subject of your pending motion (Bongiorno and Crupi). Thanks, Laura

Laura K. Clinton  
Admitted in Washington Only  
Baker & McKenzie LLP  
815 Connecticut Ave., N.W.  
Washington, DC 20006  
Tel: +1 202 452 7023  
Fax: +1 202 416 7223  
[laura.clinton@bakermckenzie.com](mailto:laura.clinton@bakermckenzie.com)



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**From:** Roberts, Sarah [<mailto:sroberts@bakerlaw.com>]  
**Sent:** Tuesday, May 03, 2016 5:56 PM  
**To:** [david@davidwikstrom.com](mailto:david@davidwikstrom.com); Kirby, Richard A; Clinton, Laura K; [hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)  
**Cc:** Brown, Seanna R.; Vanderwal, Amy E.; Ackerman, Stephanie; Fein, Amanda E.  
**Subject:** SIPC v. BLMIS; Adv. Pro. No. 08-01789 (SMB)

Dear Counsel,

We are counsel to Irving H. Picard, Esq., Trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC and the Estate of Bernard L. Madoff, plaintiff in the above-referenced adversary proceeding.

In connection with the above referenced matter, attached please find the following Notices of Deposition:

- Notice of Deposition of Winnifer Jackson
- Notice of Deposition of Alethea Mui
- Notice of Deposition of Dorothy Khan

**Sarah Roberts**  
Paralegal

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sroberts@bakerlaw.com  
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Amy E. Vanderwal

*Attorneys for Irving H. Picard, Trustee for the  
Substantively Consolidated SIPA Liquidation  
of Bernard L. Madoff Investment Securities LLC  
and the Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

**NOTICE OF DEPOSITION OF ALETHEA MUI**

PLEASE TAKE NOTICE that pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure and Rules 7030 and 9016 of the Federal Rules of Bankruptcy Procedure, Irving H. Picard (the "Trustee"), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC ("BLMIS"), under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa *et seq.* ("SIPA"), and Bernard L. Madoff ("Madoff"), by and through his counsel,

Baker & Hostetler LLP, will take the deposition, upon oral examination, of Alethea Mui before a notary public or other person authorized to administer oaths on **May 25, 2016 at 10:00am** at the offices of Baker & Hostetler LLP located at 45 Rockefeller Plaza, New York, NY 10111, by stenographic means and videotaping. The scope of the deposition will be limited to profit withdrawal transactions and issues related thereto. You are invited to attend and cross-examine.

Date: May 3, 2016  
New York, New York

By: /s/ David J. Sheehan

**BAKER & HOSTETLER LLP**

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LLC and the Estate of Bernard L. Madoff*

To: David Wikstrom, Esq.  
233 Broadway, Suite 2208  
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*Attorney for Aaron Blecker and Adele Fox*

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of Bernard L. Madoff Investment Securities LLC  
and the Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

**NOTICE OF DEPOSITION OF WINNIFER JACKSON**

PLEASE TAKE NOTICE, that pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure and Rules 7030 and 9016 of the Federal Rules of Bankruptcy Procedure, Irving H. Picard (the "Trustee"), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC ("BLMIS"), under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa *et seq.* ("SIPA"), and Bernard L. Madoff ("Madoff"), by and through his counsel, Baker & Hostetler LLP, will take the deposition, upon oral examination, of Winnifer Jackson



before a notary public or other person authorized to administer oaths on **May 23, 2016** at **10:00am** at the offices of Baker & Hostetler LLP located at 45 Rockefeller Plaza, New York, NY 10111, by stenographic means and videotaping. The scope of the deposition will be limited to profit withdrawal transactions and issues related thereto. You are invited to attend and cross-examine.

Date: May 3, 2016  
New York, New York

By: /s/ David J. Sheehan

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and the Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

**NOTICE OF DEPOSITION OF DOROTHY KHAN**

PLEASE TAKE NOTICE that pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure and Rules 7030 and 9016 of the Federal Rules of Bankruptcy Procedure, Irving H. Picard (the "Trustee"), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC ("BLMIS"), under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa *et seq.* ("SIPA"), and Bernard L. Madoff ("Madoff"), by and through his counsel,

Baker & Hostetler LLP, will take the deposition, upon oral examination, of Dorothy Khan before a notary public or other person authorized to administer oaths on **May 25, 2016 at 2:00pm** at the offices of Baker & Hostetler LLP located at 45 Rockefeller Plaza, New York, NY 10111, by stenographic means and videotaping. The scope of the deposition will be limited to profit withdrawal transactions and issues related thereto. You are invited to attend and cross-examine.

Date: May 3, 2016  
New York, New York

By: /s/ David J. Sheehan

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LLC and the Estate of Bernard L. Madoff*

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and the Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

**NOTICE OF DEPOSITION OF JOANN SALA**

PLEASE TAKE NOTICE, that pursuant to Rule 30 and Rule 45 of the Federal Rules of Civil Procedure and Rule 7030 and Rule 9016 of the Federal Rules of Bankruptcy Procedure, Irving H. Picard (the "Trustee"), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC ("BLMIS"), under the Securities Investor Protection Act, 15

U.S.C. §§ 78aaa, et seq. (“SIPA”) and Bernard L. Madoff (“Madoff”), by and through his counsel Baker & Hostetler LLP, will take the deposition, upon oral examination, of JoAnn Sala before a notary public or other person authorized to administer oaths on **May 19, 2016** at **10:00am** at 23 Shady Court, Bayshore, NY 11706 by stenographic means and videotaping. You are invited to attend and cross-examine.

Date: May 2, 2016  
New York, New York

By: /s/ David J. Sheehan

**BAKER & HOSTETLER LLP**

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Amy E. Vanderwal  
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*Attorneys for Irving H. Picard, Trustee for the  
Substantively Consolidated SIPA Liquidation  
of Bernard L. Madoff Investment Securities  
LLC and the Estate of Bernard L. Madoff*

To: Ms. JoAnn Sala  
23 Shady Court  
West Bay Shore, NY 11706  
*Pro Se*

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*Attorney for Aaron Blecker and Adele Fox*

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